

Message Text

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12

ACTION EUR-12

INFO OCT-01 IO-04 ISO-00 SWF-01 AID-05 CEA-01 CIAE-00

COME-00 EB-04 FRB-01 INR-05 NSAE-00 RSC-01 CIEP-01

SP-02 STR-01 TRSE-00 LAB-01 SIL-01 SAM-01 OMB-01 /043 W

----- 129877

R 252039Z OCT 74

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 7703

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGNE

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY THE HAGUE

AMEMBASSY TOKYO

USMISSION OECD PARIS

USMISSION IAEA VIENNA

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E.O. 11652: N/A

TAGS: EEC, ENRG

SUBJECT: EC COMMISSION LETTER ON LEGAL ASPECTS OF IEP

REF: A. EC BRUSSELS 8142 (NOTAL)

B. EC BRUSSELS 8322 (NOTAL)

1. SUMMARY: THE COMMISSION LETTER SUPPORTS THE IEP IN SUBSTANCE BUT
RAISES LEGAL QUESTIONS. THE FRENCH APPARENTLY DO NOT INTEND TO
USE THESE ISSUES TO BLOCK PARTICIPATION BY THE EC MEMBER STATES.
END SUMMARY.

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2. THE MISSION HAS OBTAINED IN CONFIDENCE A COPY OF THE COMMISSION LETTER (REFTEL), THE MAIN POINTS OF WHICH ARE:

A. THERE IS SUBSTANTIAL AGREEMENT BETWEEN THE OBJECTIVES OF THE ECG/IEP AND THE COMMUNITY ENERGY PROGRAM;
B. ARTICLES 41 AND 42 OF THE IEP (NATURAL URANIUM AND ENRICHED URANIUM) AND ANY RESEARCH EFFORTS IN NUCLEAR FUSION BEAR ON PROVISIONS OF THE EURATOM TREATY.
C. CERTAIN SECTIONS OF CHAPTERS 1 THROUGH 4 OF THE IEP (EMERGENCY SHARING) COULD BE IN CONFLICT WITH PORTIONS OF THE TREATY OF ROME RELATIVE TO THE FREE CIRCULATION OF GOOD AND THE COMMON COMMERCIAL POLICY. THEY WOULD BE CONSISTENT IF COMMUNITY PARTICIPATION IS INTRODUCED INTO THE SYSTEM OR A SYSTEM COMPLYING WITH THE TREATY'S PROVISIONS IS ORGANIZED AMONG THE MEMBER STATES.
D. THE COMMISSION PLANS TO PROPOSE TO THE COUNCIL THAT THE COMMUNITY ADHERE TO THE AGREEMENT.
E. THE COMMISSION EMPHASIZES THAT BEFORE MEMBER STATES ADHERE TO THE AGREEMENT THEY SHOULD TAKE ALL NECESSARY ACTION TO ENSURE THAT THE COMMUNITY'S SOLIDARITY AND THE PROVISIONS OF THE TREATIES ARE RESPECTED.
THE FULL TEXT OF THE COMMISSION LETTER (INFORMAL MISSION TRANSLATION IS BEING TRANSMITTED SEPTTEL).

3. EC COMMISSION VICE PRESIDENT SIMONET BRIEFED THE PRESS ON THE GENERAL OUTLINE OF THE COMMISSION'S LETTER ON OCTOBER 25. HE NOTED THAT WITH REGARD TO AIMS AND MEANS THE IEP AND THE COMMUNITY ENERGY POLICY WERE IN SUBSTANTIAL AGREEMENT. AS GUARDIAN OF THE TREATIES, HOWEVER, THE COMMISSION HAD TO POINT OUT CERTAIN LEGAL ISSUES. HE SAID THE MOST IMPORTANT WAS THE NEED TO MAKE THE OIL-SHARING MECHANISM OF THE IEP CONSISTENT WITH THE EC'S COMMON COMMERCIAL POLICY. ONLY BY A FORMAL COMMITMENT TO THIS EFFECT COULD THE EC AVOID BEING IN VIOLATION OF THE TREATY. AS A PRACTICAL MATTER WHAT WOULD BE REQUIRED WOULD BE THE EC EXTENDING THE BENEFITS OF THE OIL SHARING SCHEME TO FRANCE. HE SAID THE COMMISSION WOULD PROPOSE A COMMUNITY INTERNAL OIL-SHARING MECHANISM TO THE COUNCIL, AND HE THOUGHT A COUNCIL DECISION COULD BE TAKEN BEFORE THE END LIMITED OFFICIAL USE

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OF THE YEAR. SIMONET FURTHER POINTED OUT THAT ONE WAY THE SCHEME COULD WORK WOULD BE TO CREATE A EUROPEAN OIL ZONE WHICH, FOR PURPOSES OF SHARING WITH OTHER CONSUMERS, WOULD BE TREATED AS A SINGLE ENTITY.

4. SIMONET SAID IF THE COMMISSION WERE TO PARTICIPATE IN THE NEW AGENCY AS AN OBSERVER, THERE WOULD BE NO PROBLEM. IF, HOWEVER, THE COMMISSION'S PARTICIPATION WENT BEYOND OBSERVER STATUS, A

COUNCIL DECISION WOULD BE REQUIRED. UNANIMITY WOULD BE REQUIRED BECAUSE OF THE IMPORTANCE OF THE QUESTION. WERE THERE AN ABSTENTION, IT WOULD HAVE TO BE FORMULATED TO INDICATE THAT THERE WAS NO INFRINGEMENT OF THE ROME TREATY. HE NOTED THAT THERE WERE PRECEDENTS FOR COMMUNITY MEMBERSHIP IN ORGANIZATIONS TO WHICH NOT ALL MEMBER STATES BELONGED. HE CITED THE IAEA SAFEGUARDS ARRANGEMENT AS AN EXAMPLE.

5. FRENCH PERMREP BURIN DES ROSIERS TOLD AMBASSADOR GREENWALD AT LUNCH ON OCTOBER 25 THAT HE HAD RECEIVED A COPY OF THE COMMISSION LETTER AND FOUND IT "OBSCURE." HE BELIEVES THE MAIN PROBLEM IS THE ISSUE OF FREE CIRCULATION OF GOODS WITHIN THE COMMON MARKET SHOULD THE OIL-SHARING PROVISIONS OF THE IEP EVER HAVE TO BE PUT INTO FORCE SINCE NOT ALL NINE WILL BE MEMBERS.

6. BURIN POINTED OUT, HOWEVER, THAT FRANCE IS TAKING A REASONABLE AND UNDERSTANDING POSITION AND WILL NOT REPEAT NOT TRY TO STOP THE OTHERS FROM GOING AHEAD. HIS PERSONAL VIEW IS THAT, IF FRANCE TOOK A MORE NEGATIVE LINE, IT COULD USE THE COMMISSION LETTER TO BLOCK THE WHOLE PROJECT. THIS IS NOT FRANCE'S INTENTION. THE FACT THAT THE NEW AGENCY WILL BE IN THE OECD FRAMEWORK RATHER THAN A SEPARATE BODY MAKES IT EASIER FOR FRANCE TO GO ALONG. THE OECD CONNECTION ALSO ALLOWS THE COMMISSION TO BE INCLUDED.

7. IN RESPONSE TO AMBASSADOR GREENWALD'S QUESTION ABOUT PARTICIPATION OF THE COMMUNITY AS SUCH WHEN NOT ALL MEMBER STATES WILL BE PARTICIPATING, BURIN SAID THAT THERE WAS A PROBLEM, BUT, LIKE SIMONET, HE NOTED THE EURATOM IAEA PRECEDENT.

8. IN ADDITION TO THE FULL MOVEMENT OF GOODS UNDER THE EMERGENCY SHARING PROVISIONS, BURIN ALSO MENTIONED AS A SPECIAL PROBLEM THE PROVISIONS ON URANIUM ENRICHMENT AND NATURAL URANIUM. THIS IS AN AREA WHERE THE COMMUNITY WANTS TO MOVE AHEAD TO BECOME SELF-LIMITED OFFICIAL USE

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SUFFICIENT. AS BURIN SEES IT, THERE MAY BE GENUINE CONFLICT OF INTEREST BECAUSE OF US DESIRE (HE SPOKE OF US INDUSTRY) TO HOLD ON TO THEIR PRESENT DOMINANT SUPPLIER POSITION. DEALING WITH THESE MATTERS ON A 12-COUNTRY BASIS WOULD RESULT IN A DIFFERENT PATTERN THAN ON A EC-NINE BASIS.

9. BURIN SAID THAT HE DOES NOT EXPECT THAT THE COUNCIL OR THE PERM REPS WILL TAKE ANY FORMAL ACTION OR NECESSARILY HAVE ANY REAL DISCUSSION OF THE COMMISSION'S ANSWER TO VAN ELSLANDE. AS HE SEES IT, THIS IS SIMPLY AN EXPRESSION OF THE COMMISSION'S VIEWS IN RESPONSE TO A MEMBER STATE INQUIRY AND EACH MEMBER STATE CAN NOW DRAW ITS OWN CONCLUSIONS.

10. A SOURCE IN THE UK DELEGATION SAYS HE IS CONFIDENT HMG WILL GO AHEAD AS SCHEDULED ON OCTOBER 27, BY INDICATING ITS INTENTION

TO TOIN THE IEA. THE DETAILS OF SQUARING THE IEA WITH THE COMMUNITY
COULD BE WORKED OUT LATER.

11. COMMENT: IF, AS BURIN SUGGESTS, THE FRENCH ARE NOT DIFFICULT
IN THE EC, ALL THE PROBLEMS RAISED BY THE COMMISSION LETTER COULD
BE HANDLED. ONE POSSIBILITY WOULD BE TO WORK OUT LANGUAGE TO BE
USED BY EC MEMBER STATES WHEN THEY ADHERE TO THE IEP. IT COULD BE
A STATEMENT TO THE EFFECT THAT THEY WOULD TAKE NO ACTION UNDER THE
IEP WHICH WOULD BE INCONSISTENT WITH THE EC TREATIES.
GREENWALD

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TREATY COMPLIANCE, URANIUM, POLICIES, IEP
Control Number: n/a
Copy: SINGLE
Draft Date: 25 OCT 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974ECBRU08395
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740308-0275
From: EC BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741017/aaaaanxe.tel
Line Count: 179
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: A. EC BRUSSELS 8142 (NOTAL)
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 27 MAR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <27 MAR 2002 by elyme>; APPROVED <23 MAY 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EC COMMISSION LETTER ON LEGAL ASPECTS OF IEP
TAGS: ENRG, EEC, ECG
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005